

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

MARTIN J. WALSH,)
SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF LABOR,)
)
Plaintiff,)
)
v.)
)
RESTO CONTRACTING, LLC,)
BETHANY BERRY RESTO, individually, owner,)
And as manager of the aforementioned company)
)
Defendants.)

Civil Action No. 2:22-cv-00015

COMPLAINT

Plaintiff, Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Plaintiff”), brings this action to enjoin Resto Contracting, LLC, a Virginia limited liability company, Bethany B. Resto, individually and as owner, officer, and manager of the aforementioned company (collectively, “Defendants”), from violating the provisions of Sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (“the Act”), and for a judgment against Defendants in the total amount of back wage compensation found by the Court to be due to any of the employees of Defendants pursuant to the Act and an equal amount due to the employees of Defendants in liquidated damages.

1. Jurisdiction of this action is conferred upon the Court by Section 17 of the Act, 29 U.S.C. § 217, and by 28 U.S.C. §§ 1331 and 1345.

2. During all relevant times, Defendant Resto Contracting, LLC. (“Resto”) was a company duly organized under the laws of the Commonwealth of Virginia. Resto’s registered

address and principal place of business was 3800 Pughsville Rd., Lot 53, Suffolk, VA 23435, within the jurisdiction of this Court. Resto was engaged as an employment agency for local construction companies within the jurisdiction of this Court.

3. Defendant Bethany B. Resto was the company's president and owner of the limited liability company identified in Paragraph II and resides at 3800 Pughsville, Rd., TRLR 53, Suffolk, VA 23435. Bethany Resto directed employment practices and has directly or indirectly acted in the interest of Defendant Resto in relation to their employees at all relevant times herein, including interviewing, hiring, and setting pay rates for employees, and setting the conditions of employment for employees, and meets the definition of an employer under Section 3(d) of the Act. At all times relevant herein, Bethany B. Resto has been responsible for making, keeping, and preserving records of Resto's workers, including accurately recording regular work hours and pay separately from overtime work hours and pay.

4. At all times hereinafter mentioned, Defendants have been an enterprise within the meaning of Section 3(r) of the Act, in that Defendants have been, through a unified operation or common control, engaged in the performance of related activities for a common business purpose. These activities constituted (and/or were related to) providing construction services, in furtherance of the business purposes of Defendants' unified business entity.

5. At all times relevant herein, Defendants have employed, and are employing, employees in the activities of an enterprise engaged in commerce or in the production of good for commerce, including employees providing constructions services, handling, moving, or otherwise working on goods or materials that have been moved in or produced for commerce. Further, at all times relevant herein, Defendants have had an annual gross volume sales made or

business done of not less than \$500,000.00, thereby affording coverage over all their employees pursuant to Section (3)(s)(1)(A) of the Act.

6. During the time period of at least August 19, 2017, through at least August 19, 2019 (“relevant period”), Defendants employed the individuals listed in the attached Schedule A (collectively “employees”) as construction workers, including, but not limited to, finishers, loaders, operators, and carpenters.

7. Defendants willfully violated the provisions of Sections 7 and 15(a)(2) of the Act by employing individuals, including construction workers such as finishers, loaders, operators, and carpenters in an enterprise engaged in commerce or handling goods or materials that have been moved in or produced for commerce for workweeks longer than those prescribed in Section 7 of the Act without compensating said employees for employment in excess of the prescribed hours at rates not less than one and one-half times their regular rates. Therefore, Defendants are liable for the payment of unpaid overtime compensation and an equal amount of liquidated damages under Section 16(c) of the Act.

- a. For example, during the time period of at least August 19, 2017, through at least August 19, 2019 (“relevant period”), Defendants improperly classified individuals, including, construction workers such as finishers, loaders, operators, and carpenters as independent contractors and thereby failed to compensate those individuals who worked over 40 hours in a workweek one and one-half times their regular rate. Although many of these individuals worked for more than 40 hours in a given week, these individuals did not receive time and one-half their regular rate for their overtime hours.

8. Defendants violated the provisions of Sections 11(c) and 15(a)(5) of the Act in that Defendants failed to make, keep, and preserve adequate and accurate records of their employees, which they maintained as prescribed by the regulations issued and found at 29 C.F.R. Part 516. For example, Defendants failed to keep and preserve payroll records for employees including records of hours worked by the employees and failed to maintain full addresses for the employees. *See* 29 C.F.R. §§ 516.2(a), 516.5(a)(2), (7) & (8).

9. As a result of the violations alleged above, amounts are owed for hours worked that were paid at rates less than the rate set forth in Section 7 of the Act for the employees named in Schedule A attached to this Complaint. Additional amounts may be due to other employees employed by Defendants during the time period covered by this Complaint (and continuing up to the time Defendants demonstrate that they came into compliance with the Act) whose identities are not now known to the Plaintiff.

10. During the investigative period, Defendants continually and willfully violated the provisions of the Act as alleged above. A judgment permanently enjoining and restraining the violations herein alleged (including restraining of withholding of overtime compensation) is specifically authorized by Section 17 of the Act, 29 U.S.C. § 217.

WHEREFORE, cause having been shown, the Secretary prays for judgment against Defendants providing the following relief:

(1) For an injunction issued pursuant to Section 17 of the Act permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with Defendants who receive actual notice of any such judgment, from violating the provisions of Sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and

(2) For judgment pursuant to Section 16(c) of the Act finding Defendants liable for unpaid overtime compensation due to certain of Defendants' current and former employees listed in the attached Schedule A for the period from at least August 17, 2017, through at least August 19, 2019, and for an equal amount due to certain of Defendants' current and former employees in liquidated damages. Additional amounts of back wages and liquidated damages may also be owed to certain current and former employees of Defendants listed in the attached Schedule A for violations continuing after August 19, 2019, and may be owed to certain current and former employees presently unknown to the Secretary for the period covered by this Complaint, who may be identified during this litigation and added to Schedule A; or

(3) In the event liquidated damages are not awarded, for an injunction issued pursuant to Section 17 of the Act restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding the amount of unpaid minimum wages and overtime compensation found due Defendants' employees and prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621.

FURTHER, Plaintiff prays that this Honorable Court award costs in his favor, and an order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

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UNITED STATES DEPARTMENT OF LABOR

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January 13, 2022

/s/Mohamed Seifeldein
Mohamed Seifeldein
Trial Attorney
VSB#: 84424

Schedule A

#	Last Name	First Name
1	Aguilar	Alberto Salazar
2	Aguilar	Tania Cruz
3	Almas	Kenny
4	Alverz	Rosalba
5	Amaya	Jorge Luis Segunda
6	Anes	Erick Gabriel Aguirre
7	Aracena	Albaro Luis Morillo
8	Arevalo	Alvaro Rodriguez
9	Argueta	Alex Antonio Aguilar
10	Atunez	Angel Salvador Gutierrez
11	Aviles	James William
12	Banegas	Carlos
13	Barajas	Maria Mendivil
14	Bardales	Oneill Emilio Martinez
15	Barrera	Aurelio Gonzalez
16	Barrera	Ernesto Gonzalez
17	Bellamy	Jamal!
18	Bishop	Jefferson lenir Felix
19	Bonilla	Marvin Aguilar
20	Bowman	Shabaca
21	Bravo	Edwin Perez
22	Caceras	Melvin Antonio
23	Caceras	Ramon
24	Calderon	Ramon Suriel
25	Caldwell	Billy Joe
26	Calel	Willlam Augusto lxchop
27	Calidonio	Anny Marleny
28	Camacho	Sandra Ramirez
29	Campos	Jesus Alberto Perez
30	Castellanos	Rennie Pineda
31	Castillo	Ramon Alejandro Gonzalez
32	Cervantes	Flor
33	Cervantes	Prudencio
34	Chacon	Francisco
35	Chacon	Jose Armando Portillo
36	Chacon	Jose Elias

37	Chavez	Alejandro
38	Cherrez	Arturo
39	Cisneros	Alexander
40	Coles	Kevin
41	Colon	Aurora
42	Colon	Gadeer Morales
43	Colon	Jose Morales
44	Colon	Ramon Hirim Rivera
45	Corbin	Christopher
46	Cristobal	Jose Martiniano Granados
47	De La Cruz	Julio Angel Reyes
48	De Sierra	Bilma Yaneth Isaguirre
49	De Ventura	Marta Lopez
50	Dla2	Alondra Montes
51	Dominguez	Gabriel Pina
52	Dominguez	Nicolas Pina
53	Duarte	Maria Guadalupe Ortega
54	Elias	Edgar Leonel Mancía
55	Elias	Guadalupe Del Carmen Serr
56	Elias	Yusleivas
57	Feliciano	Damian
58	Ferrufino	Edwin Rivera
59	Fleming III	Joseph
60	Flores	Ana
61	Flores	Isabel Yoselin Granados
62	Flores	Luis
63	Flores	Mary
64	Flores	Olga
65	Francis	Gregory
66	Francis	Kristopher
67	Francis	Roger
68	Fuentes	Quedin Velasquez
69	Funez	Jose
70	Funez	Marvin
71	Galdamez	Elida
72	Garcia	Alexander
73	Garcia	Antonio
74	Garcia	Jean Paul Natal
75	Garcia	Jose Antonio Cubi

76	Giron	Reina Isabel
77	Giron	Yovanny Anibal
78	Gamero	Angel
79	Gonzalez	Martin Granados
80	Gonzalez	Rasiel Rangal
81	Gorham	Walter
82	Greene Sr.	Christopher
83	Guevara	Raquel
84	Gustavo	Urbina
85	Guzman	E. Maldonado
86	Guzman	Makelyz
87	Hall	Alfred
88	Harris	Gilbert
89	Hayden IV	Augustus
90	Henry	Daniel
91	Hernandez	Charles
92	Hernandez	Doris
93	Hernandez	Ingrid Amaya
94	Hernandez	Jesus De Leon
95	Hernandez	Jose Alonso Urrutia
96	Hernandez	Mirna Blanca Amaya
97	Hernandez	Modesto Marino
98	Hernandez	Oscar
99	Herrera	Miguel
100	Herrera	Orlando
101	Islas	Alejandro Rueda
102	Jerezano	Llilian Iveth Gabrie
103	Jiminez	Ariel Enrique Bueso
104	Jiminez	Nathan Armando Pineda
105	Jiminez Jr.	David
106	Jurado	Deris Oswaldo
107	Kelly	Kevin E.
108	Kelly	Kevin L.
109	Laguna	Filiberto Perez
110	Leon	Jose David Usljo
111	Leon	Marco Antonia Oliveri
112	Leon	Roberto Olivera
113	Lopez	Clementina Alavez
114	Lopez	Jose Sorfel

115	Lopez	Julio Cesar Ventura
116	Lozano	Arlez Cruz
117	Maldonado	Cyntdia Jonana Aguillar
118	ManJarrez	Otniel Rivera
119	Marquez	Gela Maritza Yanes
120	Martinez	Amanda
121	Martinez	Jose Alfredo Anzora
122	Martinez	Jase Hirim Garcia
123	Martinez	Juan Carlos Cruz
124	Masariegos	Joel Cash
125	Mason	Brenden
126	Mayo	Rogaciano Guerrero
127	Medina	Juan Carlos
128	Mendez	Amauri Rodriguez
129	Milla	Leimir Lozano
130	Morales	Jose Mauricio
131	Morales	Juan Carlos
132	Morales	Sandra Elizabeth Anzora
133	Moreno	Francisco Javier
134	Onate-Perez	Daniel
135	Oro	Jamie Perez
136	Orozco	Wilmer
137	Ortega	Lazaro Jesus R.
138	Ortiz	Jose Gabriel Torres
139	Ortiz	Rosel Escobar
140	Paula	Gelber Miguel Segura
141	Pecina	Randel Velazquez
142	Pena	Ambar Irizzary
143	Pena	Luis
144	Pena	Nadya Melissa Escobar
145	Perez	Eymard
146	Perez	Fernando Abraham
147	Perez	Maria
148	Perez	Meliton Ortiz
149	Pockey	Thomas
150	Quinones	Israel Feliciano
151	Ramirez	Carlos Alberto Espejo
152	Ramirez	Juan Mario
153	Ramirez	Mario Rene

154	Ramos	Abel Bartolon
155	Ramos	Eladio Labory
156	Ramos	Jorge Garica
157	Ramos	Miguel
158	Reyes	Axel
159	Reyes	Juan Carlos
160	Riddick	Davy
161	Rivera	Areli
162	Rivera	Jose Antonia
163	Rivera Jr.	Jack
164	Rodriguez	Dany Alexander Fornells
165	Rodriguez	Jose Francisco
166	Rodriguez	Juan Roberto
167	Rodriguez	lozaria Antonio
168	Rodriguez	Martin
169	Rodriguez	Pedro Antonio Contreras
170	Rodriguez	Rogelio
171	Rodriguez	Rudy D. Martinez
172	Rosa	Gerardo De Jesus
173	Salgado	Alberto Morales
174	Salinas	Joshua Perez
175	Sanchez	Euddv
176	Sanchez	Jose
177	Sanchez	Jose Alonso Uruttia
178	Santos	Karen Ochoa
179	Santos	Marveya Ochoa
180	Siles	Beartiz Denis Alexandria
181	Smith	Trey Augstis
182	Sorito	Wendy Arllany Escoto
183	Soto	Brandon Javier Hernandez
184	Soto	Sabino
185	Spencer	Flain Louise Gallop
186	Sujo	Boris Luis Toro
187	Taranto	Maria
188	Tiilman	Xachara Lee
189	Tremino	Alex
190	Tyler	Bryan
191	Valladares	Vanessa
192	Vaquis	Wilmer

193	Vargas	Diana Carolina
194	Vazquez	Alfredo Juarez
195	Vazquez	Jaime
196	Vazquez	Magnol
197	Velasquez	Oscar Arturo Hernandez
198	Velasauez	Pablo Dorian Ochoa
199	Ventura	Julio Umanzor
200	Ventura	Yuris lisseth Umanzor
201	Vilcherrez	Arturo
202	Villadres	Eddar Renan Diaz
203	Villareal	Fernando Gonzalo
204	Wall	Claude
205	Wandt	Corey
206	Wyatt	Kijouan
207	Zamora	Michael
208	Zuares	Fransieso